

Attorney Docket No.: RTS-0266
Inventors: Baker and Freier
Serial No.: 09/960,143
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specifically claims nucleotide sequences that specifically hybridize to particular regions which inhibit the expression of the interleukin 8 gene. The Examiner suggests that although these sequences claimed each target and modulate expression of the same gene, the sequences are considered to be unrelated, as structurally and functionally independent and distinct.

The Examiner further suggests that a search of all of the sequences claimed in claim 3 presents an undue burden on the Patent and Trademark Office. The Examiner has required Applicants to elect one claimed sequence from claim 3 to be searched with the claimed invention. Applicants respectfully traverse this restriction requirement.

MPEP §803 is quite clear; for a proper restriction requirement, it must be shown (1) that the inventions are independent or distinct AND (2) that there would be a serious burden on the Examiner if the restriction is not required. MPEP 802.01 defines "distinct" to mean that the "two or more subjects as disclosed are related, for example, as combination and part (subcombination) thereof, process and apparatus for its practice, process and product made there, etc., but are capable of separate manufacture, use, or sale, as claimed, AND ARE PATENTABLE (novel and unobvious) OVER EACH OTHER."

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As acknowledged by the Examiner, all of the identified sequences of claim 3 share the ability to modulate a common structure, namely interleukin 8. Thus, Applicants respectfully disagree with the Examiner's suggestion that the SEQ ID NOs recited in claim 3 are distinct as being novel and unobvious over each other as required by MPEP § 802.01. Accordingly, reconsideration and withdrawal of the election requirement of the sequences recited in claim 3 is respectfully requested.

However, in an earnest effort to be completely responsive, Applicants hereby elect to prosecute SEQ ID NO:3, with traverse. Claims 1 and 11 have been amended and claim 3 has been canceled to clarify that the claimed invention is a compound targeted to a single disclosed species of interleukin 8, namely, SEQ ID NO:3. Support for this amendment is found throughout the specification and at pages 70-72 and Example 13. Applicants believe that these amendments satisfy the requirements of this Restriction Requirement, as only a single species of interleukin 8 is now claimed.

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Attached hereto is a marked up version of the changes made
the claims by the current amendment. The attached page is
captioned "Version With Markings to Show Changes Made."

Respectfully submitted,

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VERSION WITH MARKINGS TO SHOW CHANGES MADE

In the claims:

Claim 3 has been canceled.

Claims 1 and 11 have been amended as follows:

1. (Amended) A compound 8 to 50 nucleobases in length targeted to a nucleic acid molecule encoding human interleukin 8 (SEQ ID NO:3), wherein said compound specifically hybridizes with said nucleic acid molecule encoding human interleukin 8 and inhibits the expression of human interleukin 8.

11. (Amended) A compound 8 to 50 nucleobases in length which specifically hybridizes with at least an 8-nucleobase portion of an active site on a nucleic acid molecule encoding human interleukin 8 (SEQ ID NO:3) .